



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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TIMOTHY W. BOYER
Interim Executive Director

November 7, 2003

Dear Interested Party :

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the November 18, 2003 Business Taxes Committee meeting. This meeting will address the proposed new Regulation 1828, *Process for Reviewing Transactions and Use Tax Distribution Inquiries*.

Action 1 on the Agenda consists of items on which we believe interested parties and staff are in full agreement.

If you wish to have any consent items (Action 1) discussed fully at the Committee meeting, you must contact a Board Member prior to Wednesday, November 12 to request removal of the item from the Consent Agenda. In addition, please notify Ms. Charlotte Paliani, Tax Policy Manager, after you contact a Board Member's Office. Ms. Paliani may be reached at (916) 324-1825.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Board Meetings and Committee Information" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/meetings.htm#two>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m. on November 18, 2003** in Room 121 at the address shown above.

Sincerely,

Ramon J. Hirsig
Deputy Director
Sales and Use Tax Department

RJH: ca

Enclosures

cc: (all with enclosures)

Honorable Carole Migden, Chairwoman
Honorable Claude Parrish, Vice Chairman
Honorable Bill Leonard, Member, Second District (MIC 78)
Honorable John Chiang, Member, Fourth District
Honorable Steve Westly, State Controller, C/O Ms. Marcy Jo Mandel
Ms. Carole Ruwart, Board Member's Office, First District (MIC 71)
Ms. Sabina Crocette, Board Member's Office, First District
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)
Mr. Romeo Vinzon, Board Member's Office, Third District (via e-mail)
Ms. Margaret Pennington, Board Member's Office, Second District (via e-mail)
Mr. Lee Williams, Board Member's Office, Second District (MIC 78 and via e-mail)
Mr. Tim Treichelt, Board Member's Office, Second District (via e-mail)
Mr. Sylvia Tang, Board Member's Office, Fourth District (MIC 72)
Mr. Michael Thomas, Board Member's Office, Fourth District
Mr. Timothy Boyer (MIC 73)
Acting Chief Counsel (MIC 83)
Ms. Janice Thurston (MIC 82)
Mr. Warren Astleford (MIC 82)
Mr. John Waid (MIC 82)
Ms. Jean Ogrod (via e-mail)
Mr. Jeff Vest (via e-mail)
Mr. David Levine (MIC 85)
Mr. Steve Ryan (via e-mail)
Mr. Rey Obligacion (via e-mail)
Ms. Jennifer Willis (MIC 70)
Mr. Dan Tokutomi (via e-mail)
Mr. Dave Hayes (MIC 67)
Ms. Charlotte Paliani (MIC 92)
Mr. Joseph Young (via e-mail)
Mr. Jerry Cornelius (via e-mail)
Mr. Jeffrey L. McGuire (via e-mail)
Mr. Vic Anderson (MIC 40 and via e-mail)
Mr. Larry Bergkamp (via e-mail)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Lauren Simpson (MIC 50)
Mr. Charles E. Arana Jr. (MIC 50)
Ms. Cecilia Watkins (MIC 50)

AGENDA — November 18, 2003 Business Taxes Committee Meeting
Proposed Regulation 1828, *Process for Reviewing Transactions and Use Tax Distribution Inquiries*

<p>Action 1 — Agreed Upon Item</p> <p>Proposed Regulation 1828, <i>Process for Reviewing Transactions and Use Tax Distribution Inquiries</i></p> <p>Agenda, pages 1 - 6.</p>	<p>Adopt proposed Regulation 1828 as recommended by staff and interested parties in order to establish a formal process for administering district tax distribution inquiries and appeals.</p>
<p>Action 2 – Authorization to Publish</p>	<p>Recommend publication of the proposed Regulation 1828 as adopted in the above action.</p> <p>Operative Date: July 1, 2004. Implementation: 30 days following OAL approval.</p>

AGENDA — November 18, 2003 Business Taxes Committee Meeting
Proposed Regulation 1828, *Process for Reviewing Transactions and Use Tax Distribution Inquiries*

Action Item	Staff's Proposed Regulatory Language
<p>Action 1 — Agreed Upon Item Exhibit 2, pages 1-3</p>	<p>Proposed Regulation 1828. Process for Reviewing Transactions and Use Tax Distribution Inquiries.</p> <p>Reference: Section 7270 Revenue and Taxation Code.</p> <p>(a) DEFINITIONS.</p> <p>(1) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which levies a transactions and use ("district") tax that the Board administers pursuant to Part 1.6, Division 2, Revenue and Taxation Code (Sections 7251-7279.6).</p> <p>(2) DISTRICT TAX. Any tax levied under special statutory authority that the Board administers pursuant to Part 1.6, Division 2, Revenue and Taxation Code (Sections 7251-7279.6). District taxes may be for either general or special purposes.</p> <p>(3) INQUIRING DISTRICTS AND THEIR CONSULTANTS (IDC). "Inquiring Districts and their Consultants (IDC)" means any district which has adopted a district tax ordinance and which has entered into a contract with the Board to perform all functions incidental to the administration or operation of that ordinance. IDC also includes any consultant that has entered into an agreement with the tax district and has a current resolution filed with the Board which authorizes one (or more) of its officials, employees, or other designated persons to examine the appropriate sales, transactions, and use tax records of the Board.</p> <p>(4) CLAIM (INQUIRY) OF INCORRECT DISTRIBUTION OR NON DISTRIBUTION OF DISTRICT TAX. "Claim or inquiry" means a written request from an IDC for investigation of suspected improper distribution or nondistribution of district tax. The inquiry must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data must include at a minimum all of the following for each business location being questioned:</p> <p style="padding-left: 40px;">(A) Taxpayer name, including owner name and fictitious business name or d.b.a. (doing business as) designation.</p> <p style="padding-left: 40px;">(B) Taxpayer's permit number or a notation stating "No Permit Number."</p> <p style="padding-left: 40px;">(C) Complete business address of the taxpayer.</p>

AGENDA — November 18, 2003 Business Taxes Committee Meeting
Proposed Regulation 1828, *Process for Reviewing Transactions and Use Tax Distribution Inquiries*

Action Item	Staff's Proposed Regulatory Language
	<p>(D) Complete description of taxpayer's business activity or activities.</p> <p>(E) Specific reasons and evidence why the distribution or nondistribution is questioned, including the location to which the property the sales of which are at issue was delivered. In cases that involve claims that the transactions that are the focus of the appeal are subject to the IDC's district use tax, evidence must be submitted that the retailer is engaged in business in the IDC under Regulation 1827.</p> <p>(F) Name, title, and phone number of the contact person.</p> <p>(G) The tax reporting periods involved.</p> <p>(5) CLAIM DATE "Claim date" shall be the date the inquiry of suspected improper distribution or non distribution of district tax that contains the facts required by subdivision (a)(4) of this regulation is received by the Board, unless an earlier such date is operationally documented by the Board. The Board shall redistribute district tax revenues back from the claim date to the beginning of the applicable statute of limitations. If the IDC is not able to obtain the above minimum factual data but provides a letter with the inquiry documenting IDC efforts to obtain each of the facts required by subdivision (a)(4) of this regulation, the Board will use the date this inquiry is received as the claim date.</p> <p>(6) BOARD MANAGEMENT. "Board Management" consists of the Executive Director, Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.</p> <p>(b) INQUIRIES.</p> <p>(1) SUBMITTING INQUIRIES. Every inquiry regarding district tax distributions must be submitted in writing and shall include the information set forth in subdivision (a)(4) of this regulation. All inquiries must be sent directly to the Allocation Group in the Audit Determination and Refund Section of the Board's Sales and Use Tax Department.</p> <p>(2) ACKNOWLEDGEMENT OF INQUIRY. The Allocation Group will acknowledge inquiries. Acknowledgement of receipt does not mean that the inquiry qualifies to establish a claim date under subdivision (a)(4) of this regulation. The Allocation Group will review the inquiry and notify the IDC if the inquiry does not qualify to establish a claim date. Investigation of an alleged improper distribution cannot occur until a claim date is established.</p> <p>(c) REVIEW PROCESS.</p> <p>(1) REVIEW BY ALLOCATION GROUP SUPERVISOR. The Allocation Group will investigate all accepted inquiries. If the Allocation Group concludes that an improper distribution has not occurred and recommends that a request for redistribution be denied, the IDC will be notified of the recommendation and allowed 30 days from the date of mailing of the notice of denial to contact the Allocation Group Supervisor to discuss the denial. The Allocation Group's notification that an improper distribution has not occurred must state the specific facts on which the conclusion was based. If the IDC contacts the Allocation Group Supervisor, the IDC must state the specific facts on which its disagreement is</p>

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Proposed Regulation 1828, *Process for Reviewing Transactions and Use Tax Distribution Inquiries*

Action Item	Staff's Proposed Regulatory Language
	<p>based, and submit all additional information in its possession that supports its position at this time.</p> <p>(2) REVIEW BY AUDIT DETERMINATION AND REFUND SECTION SUPERVISOR. Subsequent to the submission of additional information by the IDC, if the Allocation Group Supervisor upholds the denial, the IDC will be advised in writing of the decision and that it has 30 days from the date of mailing of the decision to file a “petition for redistribution” with the Audit Determination and Refund Section Supervisor. The petition for redistribution must state the specific reasons of disagreement with the Allocation Group Supervisor’s findings. If a petition for redistribution is filed by the IDC, the Audit Determination and Refund Section Supervisor will review the request for redistribution and determine if any additional staff investigation is warranted prior to making a decision. If no basis for redistribution is found, the petition will be forwarded to the Local Tax Appeals Auditor.</p> <p>(3) REVIEW BY LOCAL TAX APPEALS AUDITOR. After the petition is forwarded to the Local Tax Appeals Auditor, a conference between the Local Tax Appeals Auditor and the IDC will be scheduled. However, the IDC may provide a written brief in addition to or instead of attending the conference. If a conference is held, the Local Tax Appeals Auditor will consider oral arguments, as well as review material previously presented by both the IDC and the Sales and Use Tax Department. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&R) detailing the facts and law involved and the conclusions reached.</p> <p>(4) REVIEW BY BOARD MANAGEMENT. If the D&R’s recommendation is to deny the petition, the IDC will have 30 days from the date of mailing of the D&R to file a written request for review of the D&R with Board Management. The request must state the specific reasons of disagreement with the D&R and submit any additional information that supports its position. Board Management will only consider the petition and will not meet with the IDC. The IDC will be notified in writing of the Board Management’s decision. If a written request for review of the D&R is not filed with Board Management within the 30-day period, the D&R becomes final at the expiration of that period.</p> <p>(5) REVIEW BY BOARD MEMBERS. If Board Management’s decision is adverse to the IDC, the IDC may file a petition for hearing by the Board. The petition for hearing must state the specific reason for disagreement with Board Management findings.</p> <p>(A) Petition for Hearing. The IDC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management’s decision. If a petition for hearing is not filed within the 90-day period, the Board Management’s decision becomes final at the expiration of that period.</p> <p>(B) Persons to be Notified of the Board Hearing. After receiving the IDC’s petition for hearing, the Board Proceedings Division will notify the IDC and the following persons of the Board hearing:</p> <ol style="list-style-type: none"> 1. The taxpayer(s) whose district tax reporting was the subject of the petition.

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Proposed Regulation 1828, *Process for Reviewing Transactions and Use Tax*
Distribution Inquiries

Action Item	Staff's Proposed Regulatory Language
	<p>2. All districts that would be substantially affected if the Board does not uphold the taxpayer's original distribution. For the purpose of this subdivision a district is "substantially affected" if its total redistribution would increase or decrease by the amount of 5% of its average quarterly distribution (generally, the prior four calendar quarters) or \$50,000, whichever is less, as a result of such redistribution.</p> <p>The notification will state that the claimed improper distribution is being placed on the Board's Hearing Calendar to determine the proper distribution and that the IDC and all districts so notified are considered parties to the hearing.</p> <p>(C) The Hearing and Parties to the Hearing. The petitioning IDC and all districts notified of the Board hearing pursuant to subdivision (c)(5)(B) are parties to the Board hearing. The taxpayer, however, shall not be considered a "party" within the meaning of this regulation unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing. The hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice. The Board's decision is final as provided in Regulation 5082. The Board's decision exhausts all parties' administrative remedies on the matter.</p> <p>(D) Presentation of New Evidence. If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, the Board Proceedings Division shall forward the new arguments or evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(C) of this regulation, no new evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor may be presented at the Board hearing.</p> <p>(d) TIME LIMITATIONS.</p> <p>(1) An IDC will be limited to one 30-day extension of the time limit established for each level of review through the Board Management level.</p> <p>(2) If action is not taken beyond acknowledgement on any inquiry for a period of six months at any level of review, the IDC may request advancement to the next level of review. For the purpose of these procedures, "action" means taking the steps necessary to resolve the inquiry.</p> <p>(3) By following the time limits set forth in subdivisions (c), (d)(1) and (d)(2), any claim date established by the original inquiry will remain open even if additional supporting information is provided prior to closure. If the time limits or any extensions are not met, or if closure has occurred, any additional supporting documentation submitted will establish a new claim date as of the date of receipt of the new information.</p> <p>(e) APPEAL RIGHTS OF DISTRICTS THAT WILL LOSE REVENUE AS THE RESULT OF A REDISTRIBUTION.</p> <p>(1) If at any time during the review process prior to Board hearing, the Board's investigation determines that an</p>

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Proposed Regulation 1828, *Process for Reviewing Transactions and Use Tax*
Distribution Inquiries

Formal Issue Paper Number 03-013

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	<p>improper distribution has occurred, any district that will lose 5% of its average quarterly receipts (generally, the prior four calendar quarters) or \$50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing the notice, to contact the Allocation Group to discuss the proposed redistribution. The losing district may follow the same appeals procedure as described in subdivisions (c) and (d) of this regulation. "Losing district" includes a gaining district where the original decision in favor of the gaining district was overturned in favor of a previously losing district. The redistribution will be postponed until the period for the losing district to request a hearing with the Allocation Group has expired.</p> <p>(2) If the losing district contacts the Allocation Group prior to Board hearing, and subsequently petitions the proposed redistribution, the redistribution postponement will be extended pending the final outcome of the petition.</p> <p>(f) OPERATIVE DATE.</p> <p>The provisions of this regulation shall apply to redistribution inquiries and appeals filed after July 1, 2004. Inquiries and appeals filed prior to this date shall continue to be subject to existing inquiries and appeals procedures. However, for inquiries filed prior to July 1, 2004, the IDC may elect in writing to proceed under the provisions of this regulation as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions of this regulation. If written election to proceed under the provisions of this regulation is made, the provisions of this regulation become applicable the date the election is received by the Board. Neither election shall be subject to revocation.</p>

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Issue Paper Number 03-013



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Proposed Regulation Regarding Process for Reviewing Transactions (Sales) and Use Tax (District Tax) Distribution Inquiries

I. Issue

Should proposed Regulation 1828, *Process for Reviewing Transactions and Use Tax Distribution Inquiries*, be adopted?

II. Staff Recommendation

Staff recommends the Board adopt Regulation 1828 in order to establish a formal process for administering district tax distribution inquiries and appeals.

III. Other Alternative(s) Considered

Do not adopt proposed Regulation 1828.

Issue Paper Number: **03-013**

IV. Background

District Taxes Generally

The California Sales and Use Tax Law imposes a sales tax upon retailers for the privilege of selling tangible personal property at retail in the State of California. The use tax is complementary (and mutually exclusive) to the sales tax and is imposed upon the consumer for the storage, use, or other consumption of tangible personal property purchased from a retailer for the purpose of storage, use, or other consumption in the State of California. Either the sales tax or the use tax applies to all retail sales of tangible personal property to customers in California, unless specifically exempted by statute.

In California, there is a statewide tax rate of 7.25%. This rate is made up from the California Sales and Use Tax (Revenue and Taxation Code (RTC) sections 6051 et. seq. & 6201 et. seq.) and the Bradley-Burns Uniform Local Sales and Use Tax (RTC sections 7200-7212). Pursuant to the latter, the counties of California impose a 1¼% tax on all sales within their boundaries. Each city within a county also imposes a local sales and use tax at rates up to 1%. This tax is offset against the county tax so that the rate within each county is a uniform 1¼%.¹

In 1969, the Legislature enacted the Transactions and Use (“District”) Tax Law (RTC section 7251 et. seq.). Under enabling statutes in various codes, local jurisdictions may impose transactions (sales) and use taxes at varying rates of the gross receipts from the sales within the jurisdiction of tangible personal property sold at retail or of the sales price of property whose use, storage, or consumption within the jurisdiction is otherwise subject to tax. (RTC sections 7261(a) & 7262(a)). Although counties and a few cities, in addition to special taxing jurisdictions, may impose such taxes, for the sake of convenience, we refer to all entities imposing such taxes as “districts.” No matter where the enabling authority is found, all district taxes are administered by the Board under the Transaction and Use Tax Law. There are, as of the date of this paper, forty districts levying forty-one district taxes. (The Los Angeles County Transportation Commission imposes two district taxes.)

District taxes may be levied for either general or special purposes. Counties may levy both general- and special-purpose district taxes. (RTC sections 7285, 7285.5.) Special districts formed for achieving specific purposes may levy only special taxes. (Ryder v. County of San Diego (1991) 1 Cal.4th 1, 15.) In recent years, more and more cities have obtained special authority to levy both special (e.g., Calexico Transactions and Use Tax- RTC sections 7286.20 and 7286.21) and general (e.g., Woodland Transactions and Use Tax- RTC section 7286.52) district taxes.

With a few exceptions, the exemptions and exclusions from district taxes mirror those of the state sales and use tax. Districts levy their taxes at uniform rates throughout their jurisdictions. Unlike local taxes, however, district tax rates are not uniform throughout the state. District tax rates range from a minimum of 0.10% to a maximum of 0.50%. The maximum combined rate of district taxes in a county may not currently exceed 1.5%, with two exceptions. (RTC section 7251.1.) Operative January 1, 2004, the maximum combined rate is increased to a uniform 2% (Senate Bill 566, Statutes 2003, Chapter 709.)

¹ Operative July 1, 2004, AB 7x (Stats. 2003, Ch. 13, sec. 10) and AB 1766 (Stats. 2003, Ch. 162, sec. 1) shift 0.5% of the local tax rate to the state for repayment of the deficit funding bond.

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The Board administers district taxes pursuant to contracts with each district in accordance with section 7270. Taxes collected by the Board are distributed on a monthly basis, less the Board's administrative costs, pursuant to sections 7271 and 7273.

There are two major differences between the local and district tax systems. The first is in orientation. Local taxes focus on the location where the retailer exercises its privilege of selling tangible personal property. (RTC section 7205; *City of Pomona v. St. Bd. of Equalization* (1959) 52 Cal.2d 305, 312.) Even if the property sold is never located in the jurisdiction seeking to tax its sale, that jurisdiction's tax applies to the transaction as long as the sale was negotiated there. (Reg. 1802(a)(3); *City of Los Angeles v. Belridge Oil Co.* (1954) 42 Cal. 2d 823, 830.)

The District Tax Law, however, places its focus on the location of the property. The place-of-sale rules for district taxes are the same as for local taxes. (RTC section 7263; Regs. 1802 and 1822.) Sections 7261 and 7262 require, however, that each district imposing a tax must include in its authorizing ordinance certain uniform provisions. One of these required provisions exempts from the transactions tax imposed on retailers, but not the use tax imposed on purchasers, sales of property to be used outside the district where the retailer ships to a point outside its district pursuant to its contract of sale with the purchaser. (RTC section 7261(f).) In interpreting and applying this exemption, Regulation 1823(a)(2), provides that the transactions tax does not apply to gross receipts from sales of tangible personal property:

“(B) To be used outside the district when the property sold is shipped to a point outside the district pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. If the purchaser uses the property in a district imposing transactions (sales) and use taxes, the use tax may apply.”

Thus, the total tax rate applicable to a transaction includes that district tax in effect in the district to which the property is delivered. A retailer not engaged in business in that district (as defined in Regulation 1827, *Collection of Use Tax by Retailers*), however, is not required to collect the district use tax of the purchaser's district.

The place-of-use orientation of district taxes has to do with the fundamental purpose of such taxes. District taxes are enacted in order to provide a benefit to the persons living within the district-- e.g. transportation or open space. As a result, the Legislature determined that only the persons living within the district should pay the tax. If there were a place-of-sale orientation in district taxes, the out-of-district retailer would pay the tax and report it to the jurisdiction in which the retailer had its sales office, and the buyer's district would not get the revenue. Consequently, district taxes are oriented to the place where the property is used in order to ensure that the revenue goes to the district where the person getting the benefit—the purchaser—is located.

For this reason, if the sale is over the counter or the retailer delivers the property sold to the purchaser in the retailer's district, the retailer pays that district's transactions (sales) tax (Reg. 1823(a), *Application of Transactions (Sales) Tax and Use Tax*). If the retailer ships the property out of its district, there are two possible consequences. If the buyer is not located in a district, then only the state-wide tax rate of 7.25% applies to the transaction. If, however, the buyer is located in a district, that district's use tax, for which the buyer is liable, applies to the transaction. If the retailer is engaged in business in the district, as defined in Regulation 1827, it must collect the district use tax from the purchaser. If the retailer is not engaged in business in the district, it is not required to collect the district use tax but may do so by

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agreement with the purchaser. If the retailer does not collect the district use tax, the purchaser must self-report it. (Reg. 1823(b).)

As a result, a sales transaction may be subject to state and local sales tax but not district use tax. The place-of-use orientation of the district tax means that the Board has far fewer issues involving extensive staff time with district taxes than it does with local taxes. Issues requiring redistribution of district taxes typically involve transposition errors on returns, improper delivery addresses, and address code errors.

The second major difference is that the retailer does not allocate district taxes among various jurisdictions around the state. Rather, the retailer either pays the transactions taxes or collects the use taxes of individual districts around the state. These taxes are individually reported on Form BOE-531-A, *Schedule A – Computation Schedule for District Tax*, because district rates are not uniform. Therefore, there is no concept of “allocation” in district taxes. Each district’s tax must be treated individually.

Redistribution of District Tax

Staff’s position with regard to redistributions of district tax revenues is described in Annotation 820.0850 (1/7/97) as follows:

“The District Tax Law does not have a statute comparable to section 7209, which provides for reallocation of misallocated local tax. Nevertheless, the Board had previously determined that it had the general power to redistribute tax under the District Tax Law as part of its duty to ensure that the proper tax went to the proper district.

“There is no statute barring the Board from making such redistribution under its general authority to administer the tax and its contractual obligation to transmit to a district the money to which it is entitled. Since there is no specific limit on how far back the Board can go in making such redistribution as there is for local tax, the Board seems to be limited only by the three-year statute of limitations contained in section 6487.”

As noted above, district tax redistribution questions do not generally involve the kinds of place-of-sale-issues that consume so much time and attention in local tax cases due to the place-of-use orientation of district taxes. Most district tax redistribution issues can be resolved quickly. On occasion, however, it has been necessary to use an appeals process to resolve a district tax dispute. On those occasions, the staff has used the procedures contained in the “Process for Reviewing Reallocation Inquiries” (the “Process”), approved by the Board’s Local Revenue Committee in February of 1996. The Process has since been promulgated in regulatory form, operative January 1, 2003, as Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*.

Initially, staff and interested parties envisioned that Regulation 1807 would operate for appeals of both local and district taxes. After further review, staff has concluded that there were several terms used with reference to local taxes that did not apply to district taxes, and vice versa, so that it was better that a regulation specifically dealing with district tax appeals be promulgated in order to avoid confusion between the two sets of taxes.

Proposed Regulation 1828, *Process for Reviewing Transactions and Use Tax Distribution Inquiries*, is intended to adapt the provisions of Regulation 1807 to district tax appeals. It is intended to implement

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the Board's obligations under RTC section 7270 to ensure that district tax is reported and distributed to the proper district. The proposed new Regulation 1828 is attached as Exhibit 2.

Interested Parties Meetings, July 29, 2003 and September 16, 2003

Interested parties meetings were held on July 29, 2003 and September 16, 2003. The interested parties present expressed support for the new regulation. There was a request to change or delete any reference to the word "allocated" from the proposed regulation, specifically from section (a)(4), since district tax is distributed and not allocated. Also, due to a reorganization at the Board, section names and titles were changed.

The Business Taxes Committee is scheduled to consider the proposed regulation at its meeting on November 18, 2003.

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends the Board adopt Regulation 1828 in order to establish a formal process for administering district tax inquiries and appeals. Provisions of the regulation include:

- Definitions - These definitions include the following: District, District Tax, Inquiring Districts and their Consultants (IDC), Claim (Inquiry) of incorrect distribution or non distribution of district tax, claim date, and Board Management, in subdivision (a).
- The minimum factual data necessary to establish a claim (inquiry), in subdivision (a)(4).
- The process for submittals and acknowledgements of inquiries, in subdivision (b).
- The various levels of review for these inquiries, in subdivision (c).
- The implications of time limitations for the levels of review, in subdivision (d).
- The appeal rights of districts that will lose revenue as the result of a redistribution, in subdivision (e). The districts that will lose revenue as the result of a redistribution may follow the same appeals procedure as the original IDC.
- An operative date, in subdivision (f).

The proposed language (see Exhibit 2) is derived from the language of, and concepts contained in, Regulation 1807 and includes definitions adapted from those that have been in use since the process was approved in February 1996. The proposed regulation contains several significant differences from Regulation 1807:

1. Claim Date: As noted in Annotation 820.0850, *Redistributions of District Tax*, the District Tax Law does not contain a statutory equivalent to RTC section 7209, *Limitations; redistributions*. As a result, in district taxes there is no concept like "date of knowledge (DOK)." There is a need, however, to establish time lines within which processes must occur in order to expedite appeals. In addition, there needs to be a date established for the start of the redistribution period. As a result, the proposed regulation borrows the DOK language of Regulation 1807 to define the "claim date" as "the date the inquiry of suspected improper distribution or non-distribution of district tax that contains the facts required by subdivision (a)(2) of this regulation is received by the Board, unless an

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earlier such date is operationally documented by the Board.” This date serves as the beginning of the redistribution period and as a starting point to the time lines proposed in the regulation.

2. Redistribution. As noted above, district taxes are not allocated, as are local taxes. The retailer designates the district tax being reported on Schedule A attached to the Sales and Use Tax Return. Therefore, the proposed regulation uses the concept of “redistribution” rather than “reallocation.” Changes to a retailer’s reporting of district taxes are thus keyed to the date the distribution was made, rather than the date the Schedule A was filed.

3. Redistribution period. Section 7209 was enacted to limit the period during which the Board could make a redistribution of local tax revenues in order to limit the financial hardship to the losing jurisdiction. As noted above, district taxes do not contain a statute comparable to Section 7209. As a result, the proposed regulation notes that district tax redistributions are made back from the claim date to the full extent of the applicable statute of limitations.

4. Claim (Inquiry) of Incorrect or Non-Distribution of District Tax. When the property sold is shipped into a district from outside that district, the transaction is subject to the use tax of the district of delivery, but the retailer is required to collect the district use tax only if it is engaged in business in the district as defined in Regulation 1827. As a result, when the claim involves property shipped from one district to another, it must include not only the shipment location but also evidence to show that the retailer is engaged in business in the district.

5. No Cross-Reference to RTC sections 6066.3, *Collection of information by cities and counties for seller’s permits*, and 6066.4, *Providing of seller’s permits to cities and counties*. These sections apply by their terms only to redistributions of local taxes. Consequently, no reference to these statutes is contained in this regulation.

B. Pros of the Staff Recommendation

Sets forth in regulatory form current administrative procedures followed by the Board regarding district tax redistributions or non-distributions.

C. Cons of the Staff Recommendation

Requires regulatory change.

D. Statutory or Regulatory Change

No statutory change is required. However, approval of staff’s recommendation will require adoption of the proposed Regulation 1828.

E. Administrative Impact

Staff will be required to notify taxpayers and local jurisdictions and their consultants of the new regulation through an article in the Tax Information Bulletin. Appropriate revisions must be made to Publication 28, *Tax Information for City and County Officials*, and the Compliance Policy and Procedures Manual (CPPM) Chapter 9, *Miscellaneous*, when this regulation is approved by the Office of Administrative Law. In addition, appropriate references will need to be included in the Rules of Practice, specifically in Regulations 5070, 5075, 5075.3, and 5080.

F. Fiscal Impact

1. Cost Impact

No additional costs. Staff will notify taxpayers of the new regulation through a Tax Information Bulletin (TIB) article. The workloads associated with publishing and

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distributing the TIB and revising Publication 28, CPPM Chapter 9, and the Rules of Practice, are considered routine and any corresponding cost would be within the Board's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

By further disseminating the process for reviewing district tax distribution inquiries to the inquiring jurisdictions and their consultants, and to taxpayers, the Board is better able to administer the district tax pursuant to contracts with each city, county, city and county, and special taxing jurisdiction in accordance with RTC section 7270, *Required contract with the board*. Accordingly, the cities, counties, and special taxing jurisdictions are better served by the Board.

H. Critical Time Frames

The provisions of the proposed regulation shall apply to redistribution inquiries and appeals filed after July 1, 2004. The regulation will become effective 30 days after approval by the Office of Administrative Law.

VI. Alternative 1

A. Description of the Alternative

Do not adopt proposed Regulation 1828.

B. Pros of the Alternative

Does not require regulatory change.

C. Cons of the Alternative

The Board's process for administering district tax appeals will not be promulgated into regulatory form.

D. Statutory or Regulatory Change

None.

E. Administrative Impact

None.

F. Fiscal Impact

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

The provisions of Regulation 1807 will not be adapted to district tax appeals and RTC section 7270 will not be made specific by regulatory form. Information regarding the Board's process regarding district tax inquiries and appeals will not be as readily available to the taxpayer.

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H. Critical Time Frames

None.

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: October 23, 2003

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



**PROPOSED REGULATION 1828, *PROCESS FOR REVIEWING
TRANSACTIONS AND USE TAX DISTRIBUTION INQUIRIES***

Staff Recommendation

Staff recommends the Board adopt Regulation 1828 in order to establish a formal process for administering district tax distribution inquiries and appeals.

The provisions of the proposed regulation shall apply to redistribution inquiries and appeals filed after July 1, 2004.

Alternative 1

Do not adopt new Regulation 1828.

Background, Methodology, and Assumptions

Staff Recommendation:

There is nothing in the proposed new Regulation 1828 that would impact revenues because the proposal only establishes a formal process for reviewing transaction and use tax distribution inquiries and appeals.

Alternative 1:

Alternative 1 has no revenue effect.

Revenue Estimate

Revenue Summary

The staff recommendation has no revenue effect.

The alternative proposal has no revenue effect.

Preparation

Bill Benson, Jr., Research and Statistics Section, Legislative Division, prepared this revenue estimate. Mr. Dave Hayes, Manager, Research and Statistics Section, Legislative Division, and Ms. Charlotte Paliani, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of October 17, 2003

Proposed Regulation 1828. Process for Reviewing Transactions and Use Tax Distribution Inquiries.

Reference: Section 7270 Revenue and Taxation Code.

(a) DEFINITIONS.

(1) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which levies a transactions and use ("district") tax that the Board administers pursuant to Part 1.6, Division 2, Revenue and Taxation Code (Sections 7251-7279.6).

(2) DISTRICT TAX. Any tax levied under special statutory authority that the Board administers pursuant to Part 1.6, Division 2, Revenue and Taxation Code (Sections 7251-7279.6). District taxes may be for either general or special purposes.

(3) INQUIRING DISTRICTS AND THEIR CONSULTANTS (IDC). "Inquiring Districts and their Consultants (IDC)" means any district which has adopted a district tax ordinance and which has entered into a contract with the Board to perform all functions incidental to the administration or operation of that ordinance. IDC also includes any consultant that has entered into an agreement with the tax district and has a current resolution filed with the Board which authorizes one (or more) of its officials, employees, or other designated persons to examine the appropriate sales, transactions, and use tax records of the Board.

(4) CLAIM (INQUIRY) OF INCORRECT DISTRIBUTION OR NON DISTRIBUTION OF DISTRICT TAX. "Claim or inquiry" means a written request from an IDC for investigation of suspected improper distribution or nondistribution of district tax. The inquiry must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data must include at a minimum all of the following for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or d.b.a. (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, including the location to which the property the sales of which are at issue was delivered. In cases that involve claims that the transactions that are the focus of the appeal are subject to the IDC's district use tax, evidence must be submitted that the retailer is engaged in business in the IDC under Regulation 1827.

(F) Name, title, and phone number of the contact person.

(G) The tax reporting periods involved.

(5) CLAIM DATE "Claim date" shall be the date the inquiry of suspected improper distribution or non distribution of district tax that contains the facts required by subdivision (a)(4) of this regulation is received by the Board, unless an earlier such date is operationally documented by the Board. The Board shall redistribute district tax revenues back from the claim date to the beginning of the applicable statute of limitations. If the IDC is not able to obtain the above minimum factual data but provides a letter with the inquiry documenting IDC efforts to obtain each of the facts required by subdivision (a)(4) of this regulation, the Board will use the date this inquiry is received as the claim date.

(6) BOARD MANAGEMENT. "Board Management" consists of the Executive Director, Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.

(b) INQUIRIES.

(1) SUBMITTING INQUIRIES. Every inquiry regarding district tax distributions must be submitted in writing and shall include the information set forth in subdivision (a)(4) of this regulation. All inquiries must be sent directly to the Allocation Group in the Audit Determination and Refund Section of the Board's Sales and Use Tax Department.

Proposed Regulation 1828. Process for Reviewing Transactions and Use Tax Distribution Inquiries

(2) ACKNOWLEDGEMENT OF INQUIRY. The Allocation Group will acknowledge inquiries. Acknowledgement of receipt does not mean that the inquiry qualifies to establish a claim date under subdivision (a)(4) of this regulation. The Allocation Group will review the inquiry and notify the IDC if the inquiry does not qualify to establish a claim date. Investigation of an alleged improper distribution cannot occur until a claim date is established.

(c) REVIEW PROCESS.

(1) REVIEW BY ALLOCATION GROUP SUPERVISOR. The Allocation Group will investigate all accepted inquiries. If the Allocation Group concludes that an improper distribution has not occurred and recommends that a request for redistribution be denied, the IDC will be notified of the recommendation and allowed 30 days from the date of mailing of the notice of denial to contact the Allocation Group Supervisor to discuss the denial. The Allocation Group's notification that an improper distribution has not occurred must state the specific facts on which the conclusion was based. If the IDC contacts the Allocation Group Supervisor, the IDC must state the specific facts on which its disagreement is based, and submit all additional information in its possession that supports its position at this time.

(2) REVIEW BY AUDIT DETERMINATION AND REFUND SECTION SUPERVISOR. Subsequent to the submission of additional information by the IDC, if the Allocation Group Supervisor upholds the denial, the IDC will be advised in writing of the decision and that it has 30 days from the date of mailing of the decision to file a "petition for redistribution" with the Audit Determination and Refund Section Supervisor. The petition for redistribution must state the specific reasons of disagreement with the Allocation Group Supervisor's findings. If a petition for redistribution is filed by the IDC, the Audit Determination and Refund Section Supervisor will review the request for redistribution and determine if any additional staff investigation is warranted prior to making a decision. If no basis for redistribution is found, the petition will be forwarded to the Local Tax Appeals Auditor.

(3) REVIEW BY LOCAL TAX APPEALS AUDITOR. After the petition is forwarded to the Local Tax Appeals Auditor, a conference between the Local Tax Appeals Auditor and the IDC will be scheduled. However, the IDC may provide a written brief in addition to or instead of attending the conference. If a conference is held, the Local Tax Appeals Auditor will consider oral arguments, as well as review material previously presented by both the IDC and the Sales and Use Tax Department. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&R) detailing the facts and law involved and the conclusions reached.

(4) REVIEW BY BOARD MANAGEMENT. If the D&R's recommendation is to deny the petition, the IDC will have 30 days from the date of mailing of the D&R to file a written request for review of the D&R with Board Management. The request must state the specific reasons of disagreement with the D&R and submit any additional information that supports its position. Board Management will only consider the petition and will not meet with the IDC. The IDC will be notified in writing of the Board Management's decision. If a written request for review of the D&R is not filed with Board Management within the 30-day period, the D&R becomes final at the expiration of that period.

(5) REVIEW BY BOARD MEMBERS. If Board Management's decision is adverse to the IDC, the IDC may file a petition for hearing by the Board. The petition for hearing must state the specific reason for disagreement with Board Management findings.

(A) Petition for Hearing. The IDC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. If a petition for hearing is not filed within the 90-day period, the Board Management's decision becomes final at the expiration of that period.

(B) Persons to be Notified of the Board Hearing. After receiving the IDC's petition for hearing, the Board Proceedings Division will notify the IDC and the following persons of the Board hearing:

1. The taxpayer(s) whose district tax reporting was the subject of the petition.
2. All districts that would be substantially affected if the Board does not uphold the taxpayer's original distribution. For the purpose of this subdivision a district is "substantially affected" if its total redistribution would increase or decrease by the amount of 5% of its average quarterly distribution (generally, the prior four calendar quarters) or \$50,000, whichever is less, as a result of such redistribution.

Proposed Regulation 1828. Process for Reviewing Transactions and Use Tax Distribution Inquiries

The notification will state that the claimed improper distribution is being placed on the Board's Hearing Calendar to determine the proper distribution and that the IDC and all districts so notified are considered parties to the hearing.

(C) The Hearing and Parties to the Hearing. The petitioning IDC and all districts notified of the Board hearing pursuant to subdivision (c)(5)(B) are parties to the Board hearing. The taxpayer, however, shall not be considered a "party" within the meaning of this regulation unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing. The hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice. The Board's decision is final as provided in Regulation 5082. The Board's decision exhausts all parties' administrative remedies on the matter.

(D) Presentation of New Evidence. If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, the Board Proceedings Division shall forward the new arguments or evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(C) of this regulation, no new evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor may be presented at the Board hearing.

(d) TIME LIMITATIONS.

(1) An IDC will be limited to one 30-day extension of the time limit established for each level of review through the Board Management level.

(2) If action is not taken beyond acknowledgement on any inquiry for a period of six months at any level of review, the IDC may request advancement to the next level of review. For the purpose of these procedures, "action" means taking the steps necessary to resolve the inquiry.

(3) By following the time limits set forth in subdivisions (c), (d)(1) and (d)(2), any claim date established by the original inquiry will remain open even if additional supporting information is provided prior to closure. If the time limits or any extensions are not met, or if closure has occurred, any additional supporting documentation submitted will establish a new claim date as of the date of receipt of the new information.

(e) APPEAL RIGHTS OF DISTRICTS THAT WILL LOSE REVENUE AS THE RESULT OF A REDISTRIBUTION.

(1) If at any time during the review process prior to Board hearing, the Board's investigation determines that an improper distribution has occurred, any district that will lose 5% of its average quarterly receipts (generally, the prior four calendar quarters) or \$50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing the notice, to contact the Allocation Group to discuss the proposed redistribution. The losing district may follow the same appeals procedure as described in subdivisions (c) and (d) of this regulation. "Losing district" includes a gaining district where the original decision in favor of the gaining district was overturned in favor of a previously losing district. The redistribution will be postponed until the period for the losing district to request a hearing with the Allocation Group has expired.

(2) If the losing district contacts the Allocation Group prior to Board hearing, and subsequently petitions the proposed redistribution, the redistribution postponement will be extended pending the final outcome of the petition.

(f) OPERATIVE DATE.

The provisions of this regulation shall apply to redistribution inquiries and appeals filed after July 1, 2004. Inquiries and appeals filed prior to this date shall continue to be subject to existing inquiries and appeals procedures. However, for inquiries filed prior to July 1, 2004, the IDC may elect in writing to proceed under the provisions of this regulation as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions of this regulation. If written election to proceed under the provisions of this regulation is made, the provisions of this regulation become applicable the date the election is received by the Board. Neither election shall be subject to revocation.